BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

22 September 2000

Comments of the United States Travel Agent Registry in the matter of	)	
Computer Reservation System (CRS) Regulations	)	**OST-97-2881-** **OST-97-3014-** **OST-97-4775-**
14 CFR Part 255	)	

COMMENTS OF THE
UNITED STATES TRAVEL AGENT REGISTRY
IN THE MATTER OF
COMPUTER RESERVATION SYSTEM (CRS) REGULATIONS

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1. Introduction.

The United States Travel Agent Registry (USTAR) is a not-for-profit business cooperative of travel agencies throughout the United States and is chartered under Article II of the Cooperative Corporation Law of the State of New York. USTAR maintains offices in New York, New York and Toronto, Canada, and represents the interests of U.S. travel agents in a variety of domains including automation, technology, sales and marketing, and distribution.

In the spirit of full disclosure, USTAR wishes to state that it is part owner, along with Registries in many other countries, of the GENESIS Travel Distribution System, an emerging CRS, ticketing, settlement, and accreditation platform implemented by travel agents worldwide as an alternative to the legacy CRSs.

2. General Observations.

USTAR believes that air transportation continues to be an essential, in some cases, required service for the movement of people and goods throughout the nation and the world. To the extent that CRSs power almost all of the schedule, booking, and ticketing mechanisms used by professional travel agents and consumers, and to the extent that past history has revealed incredible abuses of these distribution facilities by CRSs and their owner airlines, USTAR feels the Department should continue to monitor and created basic policies to assure fair and equitable deployment of these systems.

While the Department has predicated some of its direction in this proceeding based on the theory that CRS rules were originally created in an environment where specific airlines had deep-rooted economic and ownership ties with various CRS companies, and that now some of these ties have been diminished through ownership changes, USTAR asserts that these unbundling maneuvers are nothing more than crafty “slight of hand”, and that as a practical matter, even SABRE remains completely influenced if not effectively controlled by American Airlines. One does not have to venture very far to see that the physical plant, personnel, cross-over common platforms, and general operating environment of SABRE is largely an American Airlines/AMR shop; one which continues to have substantial marketing ties and agreements with SABRE. It should also be noted that within weeks of last month’s announcement that SABRE had acquired Internet-based “GetThere.com”, American Airlines announced that it would participate as a major direct-link carrier in the Internet application. The commercial influence of American Airlines over SABRE is indisputable, and thus American Airlines maintains de facto control, in practical terms, over SABRE. One must also not forget the recent invasion of Legend Airlines’ propriety SABRE data by American Airlines’ staff; so much for real arms-length separation.

United Airlines' relationship with Galileo/Apollo is much the same, and an additional fact that Galileo has ownership relationships with many international airlines in their home countries through owner National Marketing Companies (NMCs). As Worldspan is completely owned by Northwest Airlines, Trans World Airlines, and Delta Air Lines, and the majority of Amadeus owned by Air France, Iberia Airlines of Spain, and Lufthansa German Airlines, it is hard to reach any reasonable conclusion that airlines no longer have vested, financial ties with these powerful distribution facilities.

Accordingly, while there may be some change to CRS ownership on paper, the fact remains that the world's CRSs are still under the thumb and complete jurisdiction of airlines, a fact which the Department should focus on in its deliberations throughout this proceeding.

USTAR is unpersuaded that CRSs and airlines have had real arms-length divestiture, and therefore USTAR asserts that the Department should maintain stewardship over and policies for the fair and equitable implementation of CRS activities for the foreseeable future.

3. Data Privacy.

USTAR completely agrees with the submissions of many parties, including that of the Air Carrier Association of America, dated 25 August 2000 in this docket, dealing with the disclosure by CRSs of proprietary and privileged information of one party to another party. In specific terms, USTAR cannot understand nor see any justifiable reason why CRSs should be permitted to sell or otherwise distribute booking, ticketing, sales, marketing, passenger, or other travel related information to parties other than those specifically involved in the transaction.

The accumulation, access to, and distribution of private commercial data is completely anti-competitive, and the Department should take all measures to assure that this data is protected from exploitation, abuse, or other unauthorized use.

The CRSs have garnered enormous wealth through the sale of marketing and booking information provided through subscriber use, not to mention those CRS owner-airlines which have used this strategic advantage in leveraging their market position against participating airlines which cannot afford to buy or otherwise deploy this data competitively.

USTAR completely agrees with the amendment to Part 255.10 as proposed by the Air Carrier Association to mandate that CRSs be required to obtain explicit permission from any party before its data is disclosed, this to include data input and owned by travel agents.

Furthermore, to the extent that CRSs force travel agent subscribers to adhere to contractual terms whereby data input by the agent in the CRS automatically become the property of the CRS and, therefore, free to be used by the CRS as it sees fit, the Department should prohibit CRSs from imposing any contractual terms on subscribers or other user participants which relinquishes any ownership rights to data input or created by subscribers/users/participants. An explicit request to the party inputting any data, for express permission to use this data for marketing, data-mining, data-modeling, or any purpose, in a sale of the data or otherwise, outside the framework of core reservations and ticketing functionality should become mandatory.

4. CRS Contracts with Subscribers.

The CRS marketplace is nearly 30 years mature. Hardware used by subscribers has evolved over time, but in many instances is so inextricably tied to old core platforms, that user hardware can be ancient in today’s terms. While most CRSs have made significant advances in providing newer hardware, the fact remains that many travel agents are using hardware which is five to seven years old if not more.

Any justification which CRS vendors had for long-term subscriber contracts, primarily efforts to amortize the costs of providing hardware to subscribers, seems no longer realistic given the poor state of hardware upgrades in the past 10 years. Furthermore, many CRSs are all but getting out of the hardware business by offering welcome opportunities to subscribers to provide their own hardware and connectivity to the CRS core processor.

This being the case, it seems no longer realistic for the Department to support a maximum subscriber contract term of five years as stipulated in Part 255.8 in the current rules. While the Department sought to prevent subscribers from contract term abuse at the hands of CRS vendors which would attempt to indenture subscribers to unreasonably-long CRS contract terms, and therefore required CRSs to offer a three year contract option concurrently with any five year contract, the marketplace reality is that all CRS vendors have made three year contract terms so financially onerous, that the default contract has become five years.

Moreover, hundreds of USTAR members have reported that CRSs routinely failed to follow the Department's mandate in offering three year terms along-side of five year terms. Most all USTAR members reported that three year terms were only provided when specifically requested and that agents were deterred from receiving a three year contract offer through CRS representatives warning agents that three year terms were "very expensive", "not affordable", "not a good deal", etc.

CRSs have proven time and time again that they cannot be trusted to follow the Department's contract term limit requirements. Accordingly, subscribers continue to be abused by being literally forced into five year contracts as the industry standard.

In technology terms, a five year automation contract is an eternity, and locks a subscriber into a platform for so lengthy a period, that new and more efficient technology cannot be deployed.

USTAR, as owner of GENESIS in the United States, has a clear self-interest in this area. When GENESIS emerges in the marketplace as an alternative to airline-dominated CRSs, GENESIS wishes to have an environment which allows travel agents to choose GENESIS if commercial reasons exist to do so. Long-term CRS contracts with GENESIS' potential travel agency customers will be leveraged by CRSs to inhibit GENESIS' ability to acquire critical mass in new users, and therefore such lengthy contracts create a barrier to real competition and choice in CRS services. As a side matter, GENESIS will not require any contract term in excess of a month-to-month agreement with prospective subscribers.

USTAR is concerned that if the Department were merely to eliminate any specific contract maximum term, that CRSs would nonetheless retain the five year standard, and through parallel behavior in protecting the airline-dominated CRS marketshare, force agents into five year terms if not more. Therefore, USTAR asks the Department to recognize the maturity of the CRS marketplace, the vastly reduced need to amortize hardware, and the fostering of alternative booking/ticketing competition by amending Part 255.8 as follows:

a) Where a new subscriber seeks workstation, server, and communications hardware from a CRS vendor as part of a new contract for CRS services, the term for such a contact must not exceed 2 years.

b) Where an existing subscriber seeks to extend an existing CRS contract at the end of its term, without acquisition of any new hardware or chooses to remove CRS provided hardware at the end of the existing term and provide its own hardware, any term for such an extended or renewed contract shall not exceed one year.

c) Where an existing subscriber seeks to extend an existing CRS contract at the end of its term, with the acquisition of new hardware, any term for such an extended or renewed contract shall not exceed two years.

5. Obligated Participation.

Another concern voiced by USTAR members is the possibility that if airlines did indeed legally and commercially divest themselves of CRS ownership (in the real and true sense of arms-length divestiture), that such carriers might elect to remove themselves from certain integrated information and pricing displays or pull out of certain CRS participation totally.

USTAR views this possibility as setting the stage for various encampments in CRS presence (or lack therein) and might render systems favoring some carriers, and not others, by default. For example, as American Airlines purports to have no ownership interest in SABRE, it is not forced any longer, under Part 255.7 to participate in any CRS at all, and therefore may pick and choose where it distributes American Airlines' services. Like Southwest Airlines and America West Airlines, American Airlines purports no longer to be a "system owner".

Accordingly, American Airlines could pull-out of Galileo/Apollo at any given time, and thereby force travel agents to move to SABRE if American Airlines' services were desired. While this may be unlikely in that American Airlines would have a difficult time justifying such a short-term assault on their marketshare, the nature of airline alliances, and the growing centralization of automation at alliance-bound airlines may soon dictate certain platforms which are favored over others. The potential for future disruption is clear, and those who have predicted airline distributorships in the past will likely agree that these distributorships could have automation conditions imposed upon them.

Therefore, USTAR would propose that the Department amend Part 255.7 to stipulate that obligated participation in all systems is mandatory for not only each system owner, but also for any carrier which carries 5% or more of the total passengers carried in U.S. domestic services in the most recent calendar year. As a side matter, it should be noted that the Canadian CRS Rules, under the jurisdiction of Transport Canada, also contain a provision that obligated participation in all CRSs operating in Canada is also based on either system ownership or a percentage threshold of the domestic market carried.

USTAR believes that such a provision would assure that no carrier which carries a substantial portion of U.S. passenger traffic could abstain from providing its schedules, fares, and availability via the distribution facilities in place in most venues today, in an attempt to skew distribution facilities in favor of some other form of distribution which might be either discriminatory, contribute to unfair marketing practices, or be contrary to the public interest.

6. Pricing.

USTAR members are deeply concerned that the Department is not providing sufficient vigilance in the area of CRS-driven pricing rules and fare displays. Of particular concern to USTAR members is the failure by carriers to include all the available air fares in today’s CRSs. In addition, carriers have begun offering fares in certain web applications, powered by CRSs in many cases, but where the carriers refuse to supply the same air fares for distribution in the traditional agency-resident CRS. Such channeling of fares in different CRS-powered venues creates distortion, discrimination, and is clearly contrary to the public interest.

In Part 255.4 (f), the Department has stipulated that participants must provide complete and accurate information in their displays. To the extent that some carriers are not providing complete information, but only that information which they choose to provide (in an attempt to restrict the sale of various fares through various selling channels), the carriers are violating the existing rules mandated by the Department.

USTAR is concerned that if the Department were to step aside from regulating CRS display rules, effectively removing these conditions for complete and accurate information, that some carriers, along with their alliances partners, will attempt to funnel certain services and products through channels not equally accessible by all consumers, and as such, the discrimination will continue if not expand.

USTAR has already filed several complaints with the Department in the area of unfair pricing and discrimination against consumers; most of these cases have been pending for a decision in excess of two years.

While we recognize that the case load at the Department is at an all-time high, USTAR is deeply concerned that the Department has not been able to address these discriminatory pricing cases in an expeditious way. Accordingly, consumers continue to suffer from a “class-based” system, devised by airlines, to offer, one the one hand, savvy, technology-proficient consumers one set of fare offerings, and on the other hand, less attractive fare offerings to those consumers unable to access the airline through technology-driven venues. Thus, those lower-end economically-situated consumers, most in need of affordable air transportation, are those less likely to have the facilities or access required by airlines to benefit from their best fare offers, oftentimes including the lack of a credit card, a prerequisite to benefit from low fare Internet offerings.

Thus, USTAR asks that the Department assure that carriers make all of their available and lowest fares accessible through CRSs, the venue most reachable by the majority of consumers through traditional “brick and mortar” travel agencies, web-oriented travel agencies, and travel agency and airline call centers. To do otherwise would serve to perpetuate price and service discrimination by air carriers among and between various groups of consumers.

USTAR fully supports the comments filed with the Department in this docket by Donald Pevsner (11 August 2000), The American Antitrust Institute, and the Consumers’ Union (both 21 September 2000), all of which detail, absent regulatory oversight by the Department, the severe anti-consumer consequences of airlines, and the CRSs which they influence, providing incomplete, inaccurate, deceptive, and misleading fare and schedule information to the traveling public.

7. Conclusion.

USTAR believes that while the travel industry and its relationship with CRSs is indeed mature and fairly stable, the move by carriers to embrace other distribution channels, particularly the Internet, is all but in its infancy stages. It would be imprudent for the Department to divest itself of regulatory oversight of the CRS industry, given the many “unchartered” waters in which these new venues navigate.

While the Department many consider amending CRS rules, it should do so with the view of protecting consumers and to assure a competitive airline distribution environment. To simply sever its authority at this juncture would be unwise and could lead to commercial and consumer chaos.

USTAR thanks the Department for giving it this opportunity to express its comments in the present docket.

Respectfully submitted,

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22 September 2000